IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1192 of 2007

Saroja .. Petitioner

Vs.

1. The State, rep. by
   Secretary to Government
   Prohibition and Excise Department
   Fort St.George, Chennai - 9.

2. The Commissioner of Police
   Detaining Authority
   Greater Chennai, Egmore
   Chennai - 600 008. ..
Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus to call for the records in connection with the order of detention passed by the 2nd respondent dated 15.3.2007 in Memo No.92/2007 against the petitioner's son Mohan S/o. Velayudam who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the body and person of the petitioner's son i.e. the detenue before this Honourable court and set him at liberty.

For Petitioner : Mr.B.Ganeshamoorthy

For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

WEB COPY

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the son of the petitioner - Mohan, as the said authority arrived at the subjective satisfaction that the said

https://hcservices.ecourts.gov.in/hcservices/

Mohan is a Goonda and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2.1. The order of detention dated 15.3.2007 was passed on the basis of ground case in Crime No.102 of 2007 for alleged commission of offence under Sections 341, 336, 427, 392, 397, 307 and 506(ii) of the Indian Penal Code, complaint of which was given by one Murugesan. The allegation against the detenu was that on 3.3.2007 at about 2.30 pm, when the complainant was returning, near M.S.Koil Street and Cemetery Road junction signal, the detenu and one Selvakumar wrongfully restrained him. The detenu took out a knife, brandished the same and voluntarily inserted his hand into the shirt pocket of Murugesan and took away Rs.150/-. When Murugesan raised hue and cry, the detenu and Selvakumar, who were armed with knife, chased him, the public who were at the nearby bus stop and shops ran for safer places. The detenu and his associate took cool drink bottles from the nearby shop and hurled the same against the public and threatened the public with knife. Based on the complaint of complainant, a case, as referred to above, was registered and the detenu was apprehended.

2.2. That apart, the detaining authority also took note of three adverse cases pending against the detenu, viz., Crime Nos.1976/2006 and 88 of 2007 on the file of Royapuram Police Station for the offences punishable under Sections 341, 324, 307 read with 506(ii) and 506(ii) IPC; and Crime No.18 of 2007 on the file of Fishing Harbour Police Station for the offences punishable under Sections 341, 384 and 506(ii) IPC. Considering these activities of the detenu are prejudicial to maintenance of public order, the detaining authority passed the impugned order dubbing the detenu as a "Goonda".

3. Challenging the said detention, the mother of the detenu has filed the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records of the leading to the detention of the detenu vide detention order dated 15.3.2007 on the file of the second respondent in Memo No.92/20-07, to set aside the same and to direct the second respondent herein to produce the detenu now confined in Central Prison, Puzhal, Chennai before this Court and to set him at liberty.

4. We heard both sides and perused the materials available on record.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

5. The main contention of the learned counsel for the petitioner is that even though the detenu is one Mohan, in page No.(4) of the detention order dated 15.3.2007, allegations are made against one Kothandan and therefore, the same would only tantamount to non-application of mind on the part of the detaining authority.

6. A perusal of the detention order dated 15.3.2007 shows that at page:(4) allegations are made against one Kothandan, whereas the name of the detenu is Mohan. At Page (4) it is stated as under:

> ".... The Inspector of Police during the course of investigation arrested Tr.Kothandan on 6.3.2007.."
>
> "... Hence I am satisfied that Thiru Kothandan is habitually committing crime and also acted in a manner prejudicial to the maintenance of public order..."

7. The above discrepancy in the detention order only shows the non-application of mind by the detaining authority in passing the detention order and for this reason alone, the order of detention is liable to be set aside.

The habeas corpus petition is accordingly allowed and the order of detention passed by the second respondent in proceedings dated 15.3.2007 against the detenu is quashed and the detenu is directed to be set at liberty forthwith from custody unless he is required in connection with any other case.

Sasi

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

To:

1. The Secretary to Government
   State of Tamil Nadu
   Prohibition and Excise Department
   Fort St.George, Chennai - 9.

2. The Commissioner of Police
   Detaining Authority
   Greater Chennai, Egmore
   Chennai - 600 008.

3.The Superintendent, Central Prison, Puzhal, Channai

4. The Joint Secretary
  to the Government of Tamil Nadu,
Public (Law and Order) Department,
Fort St George, Chennai 9.

5. The Public Prosecutor
High Court, Madras.

• 1 cc to Mr. B. Ganeshamurthy, Advocate SR No. 68144
•

BVR(CO)
SR/29.11.2007

H.C.P.No.1192 of 2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/